THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.5420 OF 2006

Between:

Mohammad Shanawaz

.....Petitioner

Vs.

The Joint Secretary (CVP) & Chief Passport Officer,
CVP Division, Ministry of External Affairs,
Patiala House Annexxee, Tilak Marg,
New Delhi – 110011 and another

.....Respondents

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.5420 OF 2006

O R D E R:

This Court issued Rule Nisi on 20.03.2006.

This writ petition is filed seeking a writ of Mandamus declaring the action of the 2nd respondent herein in not receiving the application of the petitioner dated 6-3-2006 for change of his surname from Syed. Shanawaz to Mohammad Shanawaz and also for change of his date of birth as 15-6-1982 as per his SSC marks memo, with that of the existing wrong date of birth, which is shown as 12-1-1978 in the existing passport bearing No. B 1768209 issued by the officials of the 2nd respondent valid from 14-3-2000 to 13-3-2010 by changing his present residential address as premises No.11-21-184, L.B Nagar, N.T.R Nagar, Ranga Reddy District with that of premises No.11-14-16/1/411, N.T.R Nagar, L.B Nagar, Ranga Reddy District, where the petitioner was residing on rent at the time of issuance of previous passport, for issuing fresh passport by taking back the present above shown passport and orally asking the petitioner to bring order from Civil Court of Law for issuance of any fresh passport by correcting the surname, date, month and year of birth and for change of residential address in the passport as arbitrary and illegal and to pass other consequential orders.

W.P.M.P.No.24237 of 2007 is filed praying for a suitable

amendment to the effect that to issue a direction more particularly in not receiving the application of the petitioner as illegal, arbitrary and consequently direct the second respondent to receive the application of the petitioner and to correct the surname as Mohammed instead of Syed and date of birth as 15.6.1982 instead of 12.1.1978 in passport No.P1758209 of the petitioner and to pass suitable orders.

Evidently, this application had been filed to rectify the mistakes and in the light of the same, the application is hereby ordered.

It is stated that the petitioner along with his parents and other family members were residing in premises No.11-14-16/1/411, NTR Nagar, L.B.Nagar, Ranga Reddy in the year 2000, when he was intending to obtain the passport, with an intention to go abroad, as he has finished his SSC by that time, as he do not know the procedure for obtaining the passport, he had approached a Broker to get passport, who asked him to sign on some papers and by taking amounts from him got his passport bearing No.1768209, dated 14.3.2000, which is valid upto 13.3.2010. It is also stated that on verification, he came to know that there is wrong of his surname, eventhough his name was shown as “Mohammad” Shanawaz, he got mentioned as if “Syed” Shahnawaz. Eventhough he had informed him about his correct date of birth as 15.6.1982 by giving copy of SSC marks memo, he intentionally got mentioned wrongly his date, month and year of birth as 12.01.1978.

It is further stated that soon after when he asked the said broker why he has got mentioned wrong particulars of him about his surname and date, month and year of birth, said broker promised to get it rectified, but all the times he was making trips to his office but not rectified. Due to mistake about the surname and date, month and year of birth, he was unable to get opportunities to go abroad, as they were

not tallying with his particulars as shown in his SSC Certificate, even though he was eager to go abroad by getting visa.

It is also stated that by getting fed up with the attitude of the Broker, he personally approached the office of respondent No.1, where some of the employees of the respondent informed him for change of his surname, he has to give particulars of his existing surname and to change his surname along with the present address in two local daily news papers, along with an affidavit notarized by a public notary, about the change of surname and for the purpose of the change of date of birth in the existing passport and for issuance of fresh passport by receiving back his existing passport, they informed him to submit his SSC marks memo, evidencing his correct date of birth and asked him to make an application in the office of the respondent, for the purpose of fresh pass port by changing his surname and the date, month and year of birth by giving the present correct residential address where he was residing. It is also stated that his correct surname is "Mohammad Shanawaz, but due to carelessness of the broker he got mentioned his name as "Syed" Shanawaz, he had got published the same in Telugu and Hindi "Vaartha Daily" news papers of Hyderabad edition on 15th & 19th February, 2006 respectively, they were referred to as Exs.P2 & P3. Further, he had notarized an affidavit to the same effect on 13.2.2006 as per "Annexure"A" (Affidavit for Change in Name Deed Poll/Sworn Affidavit on a non-judicial stamp paper) as shown in the Passport Rules, 1980, which is referred to as Ex.P4. As his correct date of birth is as mentioned in his SSC marks memo is 15.6.1982, whereas in the Passport No.B 1768209 (Ex.P1) it was wrongly mentioned as 12.01.1978 by submitting the copy of the SSC marks memo (marked as Ex.P5) by giving his present residential address where he along with his other family members are residing as

11.21.184, N.T.R.Nagar, L.B.Nagar, Ranga Reddy, as clearly shown in the “Household Card” as issued by the State Government (marked as Ex.P.6), he had submitted his application in the office of the respondent No.2 on 06.03.1\2006 (marked as Ex.P7) for issuance of fresh passport by receiving back existing passport i.e., EX.P1 by receiving necessary charges to him.

Further, it is stated that respondent No.2 is having powers to change his name or surname in the passport on filing of the affidavit of the change in name Deed Poll/Sworn Affidavit, attested by the Public Notary and on publishing the same in two Daily Circulated News Papers. Further, for change of date of birth in regard to the passport holders who born before 26.1.1989, if a person who holds passport with incorrect date of birth on his filing application along with the date of birth certificate issued by the Educational Board or any certificate issued by Educational Boards evidencing the date of birth, the respondent is having powers as shown in the “passport Information Booklet” as shown in the Passport Rules, 1980 at Column No.4 “Birth Documents” at para No.2 is having powers to do so, he do not want to exercise the powers with sole intention to harass the petitioner like passport holders.

It is further stated that instead of receiving his application under Ex.P.7, the respondent No.2 officials refused to receive his application and orally informed him that unless he bring order from the Civil Court of Law, they will not issue fresh passport by correcting surname, date, month and year and the address. In such circumstances, the petitioner approached this Court by way of filing this writ petition.

In similar circumstances, this Court had dismissed several writ petitions issuing suitable directions.

The Circular dt.18-4-2001 reads as hereunder:-

Ministry of External Affairs
(PV-I Section)

Circular

___/401/2/5/2001 18th April, 2001

As per the current practice, in case of change of date of birth/place of birth, the applicant is required to produce the original declaratory order from a First Class Judicial Magistrate. However in view of the recent Judgment given by the High Court of Judicature at Mumbai in CWP No.1072 of 2000 filed by Shri Jigar Harish Shah, the following clarifications are issued:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c)Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

Sd//
(Manju)
Under Secretary (PV-I)

All Passport Issuing Authorities

Copy for information to L&T Division, MEA

5. In **Mohd.Narsullah Khan v. Regional Passport Officer, Hyderabad** [1] it was held :

" I n **Ali Imran v. Regional Passport Officer, Secunderabad (2003 (4) ALT 474 = 2003 (3) ALD 625,** I have considered the Circular dated 18-4-2001 issued by the Government of India in the Ministry of External Affairs pursuant to the Judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under:

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment. PIA may affect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the general clauses Act 1997, a competent authority issuing a Certificate could also make necessary amendments to the same.

(c)Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., School/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent Court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said

case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the Judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt.18-4-2001.

Following the Judgment of this Court in **Ali Imran (referred above)** this Writ Petition is also disposed of directing the respondent to consider the application of the petitioner along with the Secondary School Certificate No.PC/01/0190544/2 PRIVATE, issued by the Secretary, Board of Secondary Education, Andhra Pradesh, Hyderabad, and to pass appropriate orders in the light of the observations made in the above Judgment. There shall be no order as to costs."

6. This Court again in **Durgempudi Venkata Raghava Vs. Pass Port Officer, Ministry of External Affairs, Passport Office, Hyderabad** [2] observed at paras 9 to 14 as hereunder :

"Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No.8533 of 2004, was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued

by Secretary, Board of Secondary Education, Andhra Pradesh and pass appropriate orders in the light of the observations made in the said judgment.

It is no doubt true that the present Writ Petition was filed in the year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18-4-2001. As can be seen from the material available on record, the certificates which had been produced before this Court, it is clear that it is only a bona fide mistake which had crept in.

Apart from this aspect of the matter, no counter affidavit had been filed denying the specific averment made in the affidavit filed in support of the Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the passport was issued prior to the said circular it would be proper to give an opportunity to the writ petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18-4-2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a bona fide mistake had crept in, the Writ Petition is disposed of with the following directions.

The petitioner shall file fresh application enclosing all the copies of certificates, which are being relied upon by him, before the respondent within a period of one month from today and the respondent is directed to take into consideration of the certificates and after verifying the same, pass appropriate orders in this regard within a period of one month thereafter..."

7. In the light of the Circular and also in the light of the

decisions referred to supra, the action of the respondent cannot be said to be justified. In view of the same, the Writ Petition is disposed of directing the second respondent to receive the application of the petitioner and correct the surname as Mohammad Shanawaz, instead of Syed.Shanawaz and the date of birth as 15th June, 1982 as per SSC marks memo instead of 12th January, 1978 as shown in the existing passport bearing No. B 1768209 in accordance with Law and in the light of the Circular and also the decisions specified supra, within a period of four weeks from the date of receipt of a copy of this order. No order as to costs.

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P.S.Narayana

J.,

Dt.01.11.2007
tjs

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[1] **2005(1) ALT 95**
[2] **2005(1) ALT 751**